

Senate Bill No. 1661

CHAPTER 901

An act to amend Sections 984, 2116, 2601, 2613, 2708, and 3254 of, and to add Chapter 7 (commencing with Section 3300) to Part 2 of Division 1 of, the Unemployment Insurance Code, relating to disability compensation, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed
with Secretary of State September 26, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1661, Kuehl. Disability compensation: family temporary disability insurance.

Existing law provides for the payment of disability compensation for the wage loss sustained by an individual unemployed because of sickness or injury, and finances that compensation by means of employee contributions at specified rates to the Disability Fund.

This bill instead would provide disability compensation for any individual who is unable to work due to the employee's own sickness or injury, the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child.

This bill would establish, within the state disability insurance program, a family temporary disability insurance program to provide up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child. This bill would provide the additional benefits through additional employee contributions. This bill would also authorize employers to require that employees utilize up to 2 weeks of earned but unused vacation leave prior to that employee's receipt of these additional benefits, as provided, and specify that these provisions may not be construed to relieve an employer of any collective bargaining duties. The bill would also make related, conforming changes in provisions relating to disability compensation. These benefits would be payable for family temporary disability leaves that begin on and after July 1, 2004.

By providing for the deposit of additional moneys in the Disability Fund, a continuously appropriated special fund, for additional recipients of benefits from that fund, and for the expenditure of regulatory fee revenues for the administration of certain of its provisions, this bill would make an appropriation.

Existing law provides that it is unlawful to falsely certify the medical condition of any person in order to obtain disability benefits, to knowingly present a false statement in support of a claim for benefits, to knowingly solicit or receive any payment for soliciting a claimant to apply for disability insurance benefits, or to assist any person who engages in fraudulent or prohibited actions, as specified.

This bill would include family temporary disability insurance benefits within the disability benefits subject to the above proscriptions.

Because a violation of these provisions is a criminal offense, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 984 of the Unemployment Insurance Code is amended to read:

984. (a) (1) Each worker shall pay worker contributions at the rate determined by the director pursuant to this section with respect to wages, as defined by Sections 926, 927, and 985. On or before October 31 of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of worker contributions for the calendar year and shall notify promptly all employers of employees covered for disability insurance of the rate.

(2) (A) Except as provided in paragraph (3), the rate of worker contributions for calendar year 1987 and for each subsequent calendar year shall be 1.45 times the amount disbursed from the Disability Fund during the 12-month period ending September 30 and immediately preceding the calendar year for which the rate is to be effective, less the amount in the Disability Fund on that September 30, with the resulting figure divided by total wages paid pursuant to Sections 926, 927, and 985 during the same 12-month period, and then rounded to the nearest one-tenth of 1 percent.

(B) The director shall increase the rate of worker contributions by .08 percent for the 2004 and 2005 calendar years to cover the initial cost of family temporary disability insurance benefits provided in Chapter 7 (commencing with Section 3300) of Part 2.



(3) The rate of worker contributions shall not exceed 1.5 percent or be less than 0.1 percent. The rate of worker contributions shall not decrease from the rate in the previous year by more than two-tenths of 1 percent.

(b) Worker contributions required under Sections 708 and 708.5 shall be at a rate determined by the director to reimburse the Disability Fund for unemployment compensation disability benefits paid and estimated to be paid to all employers and self-employed individuals covered by those sections. On or before November 30th of each calendar year, the director shall prepare a statement, which shall be a public record, declaring the rate of contributions for the succeeding calendar year for all employers and self-employed individuals covered under Sections 708 and 708.5 and shall notify promptly the employers and self-employed individuals of the rate. The rate shall be determined by dividing the estimated benefits and administrative costs paid in the prior year by the product of the annual remuneration deemed to have been received under Sections 708 and 708.5 and the estimated number of persons who were covered at any time in the prior year. The resulting rate shall be rounded to the next higher one-hundredth percentage point. The rate may also be reduced or increased by a factor estimated to maintain as nearly as practicable a cumulative zero balance in the funds contributed pursuant to Sections 708 and 708.5. Estimates made pursuant to this subdivision may be made on the basis of statistical sampling, or another method determined by the director.

(c) The director's action in determining a rate under this section shall not constitute an authorized regulation.

(d) Notwithstanding subdivision (a), the director may, at his or her discretion, increase or decrease, by not to exceed 0.1 percent, the rate of worker contributions determined pursuant to subdivision (a), up to a maximum worker contribution rate of 1.5 percent, if he or she determines the adjustment is necessary to reimburse the Disability Fund for disability benefits paid or estimated to be paid to individuals covered by this section or to prevent the accumulation of funds in excess of those needed to maintain an adequate fund balance.

SEC. 1.5. Section 2116 of the Unemployment Insurance Code is amended to read:

2116. It is unlawful to do any of the following:

(a) Falsely certify the medical condition of any person in order to obtain disability insurance benefits, including family temporary disability insurance benefits, whether for the maker or for any other person.



(b) Knowingly present or cause to be presented any false or fraudulent written or oral material statement in support of any claim for disability insurance including family temporary disability insurance benefits.

(c) Knowingly solicit, receive, offer, pay, or accept any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for soliciting a claimant to apply for disability insurance including family temporary disability insurance benefits unless the payment is lawful pursuant to Section 650 of the Business and Professions Code.

(d) Knowingly assist, abet, solicit, or conspire with any person who engages in an unlawful act under this section.

SEC. 2. Section 2601 of the Unemployment Insurance Code is amended to read:

2601. The purpose of this part is to compensate in part for the wage loss sustained by any individual who is unable to work due to the employee's own sickness or injury, the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child, and to reduce to a minimum the suffering caused by unemployment resulting therefrom. This part shall be construed liberally in aid of its declared purpose to mitigate the evils and burdens which fall on the unemployed and disabled worker and his or her family.

SEC. 3. Section 2613 of the Unemployment Insurance Code is amended to read:

2613. (a) The Director of Employment Development shall develop and maintain a program of education concerning disability insurance rights and benefits.

(b) The director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to sickness, injury, or pregnancy. The notice shall be given by every employer to each new employee hired on or after June 1, 1988, and to each employee leaving work due to pregnancy or nonoccupational sickness or injury on or after July 1, 1989.

(c) Commencing January 1, 2004, the director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care for any sick or injured family member or new child who is unable to care for himself or herself. The notice shall be given by every employer to each new employee hired on or after January 1, 2004, and to each employee leaving work on or after July 1, 2004, due to pregnancy, nonoccupational sickness or injury, or the need to provide



care for any sick or injured family member or new child who is unable to care for himself or herself.

SEC. 4. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating his or her conclusion as to the claimant's disability, and a statement of his or her opinion as to the expected duration of the disability.

(b) A certificate filed to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee shall contain:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee is needed to care for the child, parent, spouse, or domestic partner.

(5) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, spouse, or domestic partner.

"Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third



party” care for the child, parent, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for an employee taking leave for reason of the birth of a child of the employee or the employee’s domestic partner, or the placement of a child who is unable to care for himself or herself with the employee in connection with the adoption or foster care of the child by the employee or domestic partner.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state, shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate with the investigation. A physician or practitioner licensed by and practicing in a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part, the term “physician” has the same meaning as it does in Section 3209.3 of the Labor Code. For purposes of this part, “practitioner” means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or nurse practitioner.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant’s hospital chart, and the certificate is signed by the hospital’s registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant’s hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include identification of diagnoses, symptoms, or a statement as to the facts of the claimant’s disability by



the physician or practitioner treating the claimant, by the registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant, or by an examining physician or other representative of the department.

SEC. 5. Section 3254 of the Unemployment Insurance Code is amended to read:

3254. The Director of Employment Development shall approve any voluntary plan, except one filed pursuant to Section 3255, as to which he or she finds that there is at least one employee in employment and all of the following exist:

(a) The rights afforded to the covered employees are greater than those provided for in Chapter 2 (commencing with Section 2625) and those provided for in Chapter 7 (commencing with Section 3300).

(b) The plan has been made available to all of the employees of the employer employed in this state or to all employees at any one distinct, separate establishment maintained by the employer in this state. “Employees” as used in this subdivision includes those individuals in partial or other forms of short-time employment and employees not in employment as the Director of Employment Development shall prescribe by authorized regulations.

(c) A majority of the employees of the employer employed in this state or a majority of the employees employed at any one distinct, separate establishment maintained by the employer in this state have consented to the plan.

(d) If the plan provides for insurance the form of the insurance policies to be issued have been approved by the Insurance Commissioner and are to be issued by an admitted disability insurer.

(e) The employer has consented to the plan and has agreed to make the payroll deductions required, if any, and transmit the proceeds to the plan insurer, if any.

(f) The plan provides for the inclusion of future employees.

(g) The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the Director of Employment Development finds that the employer or a majority of its employees employed in this state covered by the plan have given notice of the termination of the plan. The notice shall be filed in writing with the Director of Employment Development and shall be effective only on the anniversary of the effective date of the plan next following the filing of the notice, but in any event not less than 30 days from the time of the filing of the notice; except that the plan may be terminated on the operative date of any law increasing the benefit amounts provided by Sections 2653 and 2655 or the operative date of any change in the rate of worker contributions as determined by Section 984, if notice of the



termination of the plan is transmitted to the Director of Employment Development not less than 30 days prior to the operative date of that law or change. If the plan is not terminated on the 30 days' notice because of the enactment of a law increasing benefits or because of a change in the rate of worker contributions as determined by Section 984, the plan shall be amended to conform to that increase or change on the operative date of the increase or change.

(h) The amount of deductions from the wages of an employee in effect for any plan shall not be increased on other than an anniversary of the effective date of the plan except to the extent that any increase in the deductions from the wages of an employee allowed by Section 3260 permits that amount to exceed the amount of deductions in effect.

(i) The approval of the plan or plans will not result in a substantial selection of risks adverse to the Disability Fund.

SEC. 6. Chapter 7 (commencing with Section 3300) is added to Part 2 of Division 1 of the Unemployment Insurance Code, to read:

CHAPTER 7. PAID FAMILY CARE LEAVE

3300. The Legislature finds and declares all of the following:

(a) It is in the public benefit to provide family temporary disability insurance benefits to workers to care for their family members. The need for family temporary disability insurance benefits has intensified as both parent's participation in the workforce has increased, and the number of single parents in the workforce has grown. The need for partial wage replacement for workers taking family care leave will be exacerbated as the population of those needing care, both children and parents of workers, increases in relation to the number of working age adults.

(b) Developing systems that help families adapt to the competing interests of work and home not only benefits workers, but also benefits employers by increasing worker productivity and reducing employee turnover.

(c) The federal Family and Medical Leave Act (FMLA) and California's Family Rights Act (CFRA) entitle eligible employees working for covered employers to take unpaid, job-protected leave for up to 12 workweeks in a 12-month period. Under the FMLA and the CFRA, unpaid leave may be taken for the birth, adoption, or foster placement of a new child; to care for a seriously ill child, parent, or spouse; or for the employee's own serious health condition.

(d) State disability insurance benefits currently provide wage replacement for workers who need time off due to their own non-work-related injuries, illnesses, or conditions, including pregnancy, that prevent them from working, but do not cover leave to care for a sick



or injured child, spouse, parent, domestic partner, or leave to bond with a new child.

(e) The majority of workers in this state are unable to take family care leave because they are unable to afford leave without pay. When workers do not receive some form of wage replacement during family care leave, families suffer from the worker's loss of income, increasing the demand on the state unemployment insurance system and dependence on the state's welfare system.

(f) It is the intent of the Legislature to create a family temporary disability insurance program to help reconcile the demands of work and family. The family temporary disability insurance program shall be a component of the state's unemployment compensation disability insurance program, shall be funded through employee contributions, and shall be administered in accordance with the policies of the state disability insurance program created pursuant to this part. Initial and ongoing administrative costs associated with the family temporary disability insurance program shall be payable from the Disability Fund.

3301. (a) The purpose of this chapter is to establish, within the state disability insurance program, a family temporary disability insurance program to provide up to six weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

Nothing in this chapter shall be construed to abridge the rights and responsibilities conveyed under the CFRA or pregnancy disability leave.

(b) An individual's "weekly benefit amount" shall be the amount provided in Section 2655.

(c) The maximum amount payable to an individual during any disability benefit period for family temporary disability insurance shall be six times his or her "weekly benefit amount," but in no case shall the total amount of benefits payable be more than the total wages paid to the individual during his or her disability base period. If the benefit is not a multiple of one dollar (\$1), it shall be computed to the next higher multiple of one dollar (\$1).

(d) No more than six weeks of family temporary disability insurance benefits shall be paid within any 12-month period.

3302. For purposes of this part:

(a) "Child" means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an employee who stands in loco parentis to that child.

(b) "Family care leave" means any of the following:



(1) Leave for reason of the birth of a child of the employee or the employee's domestic partner, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee or domestic partner, or the serious health condition of a child of the employee, spouse or domestic partner.

(2) Leave to care for a parent, spouse, or domestic partner who has a serious health condition.

(c) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(d) "Domestic partner" has the same meaning as defined in Section 297 of the Family Code.

(e) "Family member" means child, parent, spouse, or domestic partner as defined in this section.

(f) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code.

3303. (a) An individual shall be deemed eligible for family temporary disability insurance benefits on any day in which he or she is unable to perform his or her regular or customary work because he or she is caring for a new child during the first year after the birth or placement of the child or a seriously ill child, parent, spouse, or domestic partner, subject to a waiting period of seven consecutive days during each family temporary disability benefit period where no benefits are payable within that period.

(b) An individual is not eligible for family temporary disability insurance benefits with respect to any day that he or she has received unemployment compensation benefits under Part 1 (commencing with Section 100) or under an unemployment compensation act of any other state or of the federal government.

(c) An individual is not eligible for family temporary disability insurance benefits with respect to any day of unemployment and disability for which he or she has received, or is entitled to receive, "other benefits" in the form of cash benefits as defined in subdivision (b) of Section 2629.

(d) An individual is not eligible for family temporary disability insurance benefits with respect to any day that he or she is entitled to receive state disability insurance benefits under Part 2 (commencing with Section 2601) or under a disability insurance act of any other state.

(e) An individual is not eligible for family temporary disability insurance benefits with respect to any day that another family member



is able and available for the same period of time that the individual is providing the required care.

(f) An individual who is entitled to leave under the FMLA and the CFRA must take Family Temporary Disability Insurance (FTDI) leave concurrent with leave taken under the FMLA and the CFRA.

(g) As a condition of an employee's initial receipt of family temporary disability insurance benefits during any 12-month period in which an employee is eligible for these benefits, an employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the employee's initial receipt of these benefits. If an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one week shall be applied to the waiting period required under subdivision (a). This subdivision may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this subdivision.

3304. Eligible workers shall receive benefits in accordance with provisions established under this division.

3305. If the director finds that any individual falsely certifies the medical condition of any person in order to obtain family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of 25 percent of the benefits paid as a result of the false certification. The provisions of this article, the provisions of Article 9 (commencing with Section 1176) with respect to refunds, and the provisions of Chapter 7 (commencing with Section 1701) with respect to collections shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

SEC. 7. This act shall become operative on January 1, 2004, except that benefits shall be payable for periods of family temporary disability leave commencing on or after July 1, 2004.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

